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REMARKS

The Applicant and the undersigned reviewed the Office Action carefully before preparing this response. Reconsideration is respectfully requested with regard to Claims 1-24. Nonetheless, in light of the positions presented herein, all claims are believed to be in condition for allowance.

Claims 1, 2 and 5 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 5 and 6 of U.S. Patent No. 5,167,950 to Lins (the '950 patent). Applicant respectfully disagrees with the Examiner's conclusion. Applicant asserts that the present claims are neither anticipated by nor an obvious variation of Claims 1, 5 and 6 of the '950 patent. Indeed, Claims 1, 5 and 6 of the '950 patent teach away from the present claims and are patentably distinct therefrom. As such, Applicant respectfully suggests there is no *prima facia* obviousness.

Claim 1 of the '950 patent teaches a high alcohol content, antimicrobial mousse composition containing (1) 85 to 98 % an intermediate concentrate including an alcohol (the active antimicrobial agent), a gelling agent, a nonionic stabilizer and at least about 20% water and (2) 2 to 15% a propellant component. The mousse composition is dispensed as a thick, creamy foam and stabilized in that form until the foam is mechanically compressed (i.e. by topically applying it onto the skin) (see col. 1, lines 63-68). The gelling agent is provided to prevent evaporation/dispersion of the alcohol disinfectant into the air and to provide the mousse with a sufficiently high viscosity (from 2000 to 40,000 centipoise) to stabilize the mousse (see col. 6, lines 8-11 and 35-42).

Unlike the present invention, Claim 1 of the '950 patent does not teach or suggest a substantially non-aqueous composition; rather, water comprises at least about 20% of the intermediate concentrate, and thus, at least about 17% of the mousse composition. As such, the mousse is not substantially non-aqueous. Further, contrary to the teachings of the present invention, the water content of the mousse composition increases

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conductivity, and therefore, decreases the charge capacity of the composition. Thus, the mousse composition disclosed in Claim 1 of the '950 patent will not maintain an electrostatic charge, and is therefore not electrostatically dispensable. Finally, water is known to facilitate and foster microbial growth, accordingly, the present invention teaches against use of a substantial amount of water.

Further, the gelling agent employed to stabilize the mousse composition, and the high viscosities resulting therefrom, inhibit dispersion/evaporation of the '950 composition into the air and stabilize the mousse for topical application onto the skin. Accordingly, Claim 1 and the compositions disclosed in the '950 patent not only teach away from an electrostatically dispensable composition but clearly such dispensation, if possible, would completely alter the principal operation of the mousse and render the '950 composition unsatisfactory for its intended purpose.

Claims 5 and 6 of the '950 patent teach inclusion of a humectant, such as glycerin, propylene glycol, and urea, into the composition of Claim 1 for the purposes of retaining the moisture content within the composition (see col. 8, lines 39-41). Again, Claims 1, 5 and 6 teach an invention containing a substantial aqueous component, the retention of which is described in the '950 patent as particularly useful in the mousse composition. Clearly, one skilled in the art would not provide a humectant component within a composition intended to be substantially non-aqueous. Nonetheless, as described above, the higher the moisture content of the composition, the less likely the composition will be electrostatically dispensable.

It is therefore asserted that Claims 1 through 24 of the Applicant's invention are patentably distinct and not obvious over Claims 1, 5 and 6 of the '950 patent. Applicant respectfully suggests that any obviousness-type double patenting rejection based on the '950 patent is inappropriate and therefore should be withdrawn.

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Claims 3, 4 and 6-12 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1, 5 and 6 of the '950 patent in view of U.S. Patent No. 5,591,395 to Schroeder et al. (the '395 patent). Applicant respectfully disagrees. In light of the preceding discussion, Applicant asserts that not only does the combination not teach or suggest the Applicant's invention as claimed, but there is no motivation or suggestion to combine the '950 and '395 patents.

The '395 patent is cited for disclosing a conductivity control component, which the Examiner suggests inherently includes essential oils. Applicant disagrees that the "fragrance" described in Example 1 of the '395 patent is an essential oil or a conductivity control component. Indeed, the '395 patent clearly teaches away from use of volatile hydrocarbon components, i.e. essential oils (see col. 2, lines 5-10), and is preferably perfume free. Where diluents are used, they are used in quantities less than 15% of the total composition (see col. 2, lines 10-15). The '395 patent specifically recites water as a preferred diluent for the active ingredient (col. 2, lines 26 and 27). Accordingly, such perfumes/diluents are not intended or used as conductivity control components; rather, a diluent such as water would have an opposite, conductivity enhancing effect on the compositions disclosed in the '395 patent. With respect to Example 2 of the '395 patent, a substantially aqueous composition of 10% triethylene glycol and 90% water is disclosed without inclusion of a conductivity control component. Accordingly, use of a conductivity control component is not taught by or suggested in the '395 reference and is completely absent therefrom.

Moreover, the '950 patent specifically teaches away from use of a conductivity control component such as essential oils and esters (see col. 8, lines 32-38) as these components disrupt the foam stability of the mousse. Further, the inclusion of a substantial water component into the mousse composition teaches against conductivity control, as described above. Thus, there is no motivation found in either reference to

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include a conductivity control component in the '950 compositions. Further, the '950 patent teaches away from modification of the disclosed compositions to include a conductivity control component of the type taught by the Applicant. Accordingly, Applicant asserts that the present claims, including Claims 3, 4, 6-8, Claim 9 and all claims depending therefrom, are patentably distinct and not obvious in view of the '950 and '395 patents.

Claims 13-17 and 22-24 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 5 and 6 of the '950 patent in view of the '395 patent and in further view of U.S. Patent No. 6,482,357 to Fox et al. (the '357 patent). Applicant respectfully disagrees.

The '357 is cited for teaching an electrostatic dispensing apparatus. The '357 patent teaches a substantially aqueous liquid composition including a propellant for generating airborne particles, wherein the liquid particles/droplets are imparted with a charge during the spraying of the liquid droplets by the spray device – i.e. the charge is not imparted until the spray device is actively discharging liquid droplets. The charge is achieved through specific mechanical design of the actuator, dip tube and valves of the spray device, subjecting the liquid to substantial turbulence when spraying occurs. The '357 device does not, however, use electrostatic means to generate aerosols; rather, this is accomplished by means of mechanical spraying/dispensation of the liquid.

Importantly, however, the '357 patent does not teach or suggest the use of a high voltage source electrically connected to an electrode/charging element. In fact, the '357 teaches that charge is imparted to the liquid droplets without relying on connecting the spray device to a high voltage source, and thus, teaches away from the present invention (see col. 2, lines 19-24). Indeed, none of the embodiments disclosed in the '357 patent teach or suggest utilization of a high voltage source or an electrode. Moreover, Example 1 is recited to show utility of the invention only, not as an embodiment of the invention,

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and is included for teaching rapid dispersion and effectiveness of charged particles versus that of uncharged or slightly charged particles. Contrary to the Examiner's suggestion, Example 1 does not teach or suggest a dispensing system including a high voltage source connected to an electrode as part of the '357 invention. Instead, Example 1 shows that the "artificially" charged liquid droplets can be effectively dispersed and is, thus, recited for the purposes of example only.

Further, rather than being "electrostatically dispensed", the '357 patent requires use of a pressurized vessel and a propellant component to dispense the liquid composition, which is only electrostatically charged upon actuation of the spraying device. Thus, it cannot be said the apparatus "electrostatically dispenses" liquid material.

Thus, the teachings of the '357 patent do not suggest modification of the '950 and '395 patents that would anticipate claims or make obvious Claims 13-17 and 22-24. In particular, the cited references do not disclose a conductivity control component or an electrostatically dispensable composition. In addition, the '357 patent fails to teach a voltage source and an electrode used for electrostatically dispensing a substantially non-aqueous liquid. In light of the foregoing, there can be no combination of the '950, '395 and '357 patents that discloses, teaches or suggests the all the limitations recited in the present invention.

In addition, one skilled in the art would not use the device disclosed in the '357 patent to disperse the high viscosity foam composition of the '950 patent. The device disclosed in the '357 (designed for liquid compositions) would simply not work to form electrically charged, aerosol droplets of the composition disclosed in Claims 1, 5 and 6 of the '950 patent. Alternatively, the '950 patent teaches a mousse dispensed by means of a pressurized vessel and a hydrocarbon propellant for topical application onto the skin. Accordingly, there is no reason or motivation to combine the '950 and the '357 patents as

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each discloses alternative methods for delivering compositions, one for dispensing a thick, creamy foam and the other for dispensing liquid droplets into the air.

Accordingly, it is asserted that Claims 13-17 and 22-24 are not obvious in view thereof and are in condition for allowance at this time.

Claims 18 and 19 were rejected under 35 U.S.C. § 103(a) as being unpatentable over the '357 patent in view of U.S. Patent No. 5, 196,171 to Peltier (the '171 patent). Applicant asserts that such rejection is inappropriate given the above discussion of the '357 patent. In particular, the '357 patent does not describe or suggest a method for electrostatically dispensing a glycol composition utilizing an electrode and a voltage source. Rather, the '357 patent teaches a method for dispensing a liquid through use of a pressurized vessel and a propellant component – the aerosol that is dispensed by '357 invention is mechanically generated, rather than electrostatically generated. In turn, as the liquid droplets are generated, the droplets are imparted with a charge caused by the turbulent flow.

The '171 patent describes an alternate method for vaporization which utilizes a high voltage power supply and a wick assembly (including an electrode, an outer porous capillary material, and an enclosure). As discussed above, the '357 patent teaches away from utilization of a high voltage source. There is no reason one would alter the dispenser of the '357 patent by utilizing an electrode or a high voltage source, as such modification would clearly change the principal operation of the '357 device. Accordingly, there is no motivation to combine the '357 and '171 references. Finally, neither the '357 or the '171 patent disclose an electrostatically dispensable glycol composition, thus, such combination does not teach all the limitations of Claim 18. Accordingly, Claims 18 and 19, and all claims depending therefrom, are not obvious in view of the '357 and '171 references and are patentable thereover.

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Claims 20 and 21 were rejected as being unpatentable over the '357 patent in view of the '171 patent in view of the '395 patent. However, in light of the forgoing, the teachings of the '395 patent do not suggest modification of the '357 and '171 patents that would anticipate claims or make obvious Claims 18, 20 and 21. Accordingly, Applicant asserts that the rejection of Claims 20 and 21 should be withdrawn.

In summary, Claims 1 through 24 are believed to be allowable for the reasons given herein. Accordingly, these claims remain pending following entry of this Amendment, and are believed to be in condition for allowance at this time. As such, Applicant respectfully requests entry of the present Amendment and reconsideration of the application, with an early and favorable decision being solicited. Should the Examiner believe that the prosecution of the application could be expedited, the Examiner is requested to call Applicant's undersigned representative at the number listed below.

Respectfully submitted:

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